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Administration of justice at the United Nations

Report of the Fifth Committee

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I. Introduction

1. At its 2nd plenary meeting, on 17 September 2004, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its fifty-ninth session the items entitled "Programme budget for the biennium 2004-2005" and "Administration of justice at the United Nations" and to allocate them to the Fifth Committee.

2. The Fifth Committee considered the item entitled "Administration of justice at the United Nations" at its 27th, 28th and 36th meetings, on 24 and 29 November 2004 and 9 March 2005. The Committee also considered both items at its 42nd and 43rd meetings, held on 1 and 6 April 2005. Statements and observations made in the course of the Committee's consideration of the items are reflected in the relevant summary records (A/C.5/59/SR.27, 28, 36, 42 and 43).

3. For its consideration of the items, the Committee had before it the following documents:

(a) Report of the Secretary-General on the administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board during 2001 and 2002 (A/58/300);

(b) Report of the Secretary-General on the administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board during 2002 and 2003 (A/59/70);

(c) Report of the Secretary-General on the possibility of the financial independence of the United Nations Administrative Tribunal from the Office of Legal Affairs (A/59/78);

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(d) Report of the Secretary-General on measures to prevent discrimination on the basis of nationality, race, gender, religion or language in the United Nations (A/59/211);

(e) Report of the Secretary-General on the administration of justice in the Secretariat: role of the Panels on Discrimination and Other Grievances (A/59/414);

(f) Report of the Secretary-General on the administration of justice in the Secretariat (A/59/449);

(g) Notes by the Secretary-General transmitting the report of the Joint Inspection Unit entitled "Administration of justice: harmonization of the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal" (A/59/280 and Corr.1) and his comments thereon (A/59/280/Add.1);

(h) Note by the Secretary-General transmitting the report of the Office of Internal Oversight Services on the management review of the appeals process at the United Nations (A/59/408);

(i) Report of the Secretary-General on administration of justice in the Secretariat (A/59/706);

(j) Note by the Secretary-General on compensation for officials other than Secretariat officials: members of the United Nations Administrative Tribunal (A/C.5/59/12);

(k) Interim report of the Advisory Committee on Administrative and Budgetary Questions on the administration of justice in the Secretariat (A/59/715);

(l) Comprehensive report of the United Nations Administrative Tribunal on its activities (A/58/680);

(m) Letter dated 18 November 2003 from the President of the United Nations Administrative Tribunal to the Chairman of the Fifth Committee (A/C.5/58/16).

II. Consideration of draft resolution A/C.5/59/L.46

4. At the 42nd meeting, on 1 April, the representative of the Islamic Republic of Iran and coordinator of the informal consultations on the items, introduced, on behalf of the Chairman, a draft resolution entitled "Administration of justice at the United Nations", which was subsequently issued as document A/C.5/59/L.46.

5. At the same meeting, before the consideration of the draft resolution, the Director ad interim of the Programme Planning and Budget Division and the Assistant Secretary-General for Human Resources Management made statements (see A/C.5/59/SR.42).

6. Also at the same meeting, statements were made by the representatives of Japan, the United States of America, the Russian Federation, the Syrian Arab Republic, Jamaica (on behalf of the States Members of the United Nations that are members of the Group of 77 and China), Canada, Belgium (on behalf of the States Members of the United Nations that are members of the European Union) and Nigeria (on behalf of the Group of African States) (see A/C.5/59/SR.42).

7. At the 43rd meeting, on 6 April, the representative of the Islamic Republic of Iran orally revised draft resolution A/C.5/59/L.46 by inserting, after operative paragraph 52, the following operative paragraph:

> "53. *Decides* that activities requested above that would give rise to additional resource requirements during the biennium 2004-2005 should be included in the proposed programme budget for the biennium 2006-2007".

8. Before the adoption of the draft resolution, the Director ad interim of the Programme Planning and Budget Division provided the Committee with the Secretariat's understanding of the revised draft resolution (see A/C.5/59/SR.43).

9. At the same meeting, the Committee adopted draft resolution A/C.5/59/L.46, as orally revised, without a vote (see para. 11).

10. After the adoption of the draft resolution, statements were made by the representatives of Argentina (on behalf of the States Members of the United Nations that are members of the Rio Group), India and China.

III. Recommendation of the Fifth Committee

11. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice at the United Nations

The General Assembly,

Recalling its resolutions 57/307 of 15 April 2003 and 59/266 of 23 December 2004,

Stressing that the system of justice in the United Nations as a whole should be independent, transparent, effective, efficient and fair,

Stressing also the importance of increased transparency in decision-making and increased accountability of managers for the system,

Noting that the existing system should respect the principle of due process and provide for appropriate peer review,

Noting with concern the continuing backlog of appeals in various parts of the system,

Emphasizing the necessity of informal mechanisms for the early and swift resolution of disputes in the United Nations Secretariat, in particular through a direct dialogue between managers and staff,

Emphasizing also the importance for the United Nations to have an efficient and effective system of internal justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations,

Welcoming the increased focus on training for all participants in the system of administration of justice,

Recognizing that a transparent, impartial and effective system of administration of justice is a necessary condition for ensuring fair and just treatment of United Nations staff and important for the success of human resources reform in the Organization,

Having considered the reports of the Secretary-General on the administration of justice in the Secretariat,[1] on the role of the Panels on Discrimination and Other Grievances,[2] on the outcome of the work of the Joint Appeals Board during 2001 and 2002[3] and on the outcome of the work of the Joint Appeals Board during 2002 and 2003,[4] the comprehensive report of the United Nations Administrative Tribunal on its activities,[5] the report of the Secretary-General on the possibility of the financial independence of the United Nations Administrative Tribunal from the

[1] A/59/449.
[2] A/59/414.
[3] A/58/300.
[4] A/59/70.
[5] A/58/680.

Office of Legal Affairs,[6] the report of the Secretary-General on measures to prevent discrimination on the basis of nationality, race, gender, religion or language in the United Nations,[7] the note by the Secretary-General transmitting the report of the Office of Internal Oversight Services on the management review of the appeals process at the United Nations,[8] the report of the Secretary-General containing the cost implications of the recommendations of the Office of Internal Oversight Services following its management review of the appeals process,[9] the note by the Secretary-General transmitting the report of the Joint Inspection Unit on administration of justice: harmonization of the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal,[10] the note by the Secretary-General containing his comments on the report of the Joint Inspection Unit,[11] the note by the Secretary-General on compensation for officials other than Secretariat officials: members of the United Nations Administrative Tribunal,[12] the letter dated 18 November 2003 from the President of the United Nations Administrative Tribunal addressed to the Chairman of the Fifth Committee[13] and the interim report of the Advisory Committee on Administrative and Budgetary Questions,[14]

Regretting that the present system of administration of justice in the Secretariat continues to be slow, cumbersome and costly,

Regretting also that the related reports were not introduced at its fifty-eighth session, as requested in its resolution 57/307, in addition to being submitted and issued late at its fifty-ninth session,

1. *Notes* the importance of having a strong administration of justice mechanism that avoids duplication and overlap within the formal processes;

2. *Regrets* the continued serious delays in the appeals process, and stresses the need to implement measures to improve the appeals process to make it more efficient;

I

Cross-cutting issues — general guidelines

3. *Takes note* of the reports of the Secretary-General;[1,2,3,4,6,7,9]

4. *Takes note with interest* of the report of the Office of Internal Oversight Services on the management review of the appeals process at the United Nations;[15]

5. *Endorses* the conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions set out in its report,[14] subject to the provisions of the present resolution;

[6] A/59/78
[7] A/59/211
[8] A/59/408
[9] A/59/706
[10] A/59/280 and Corr.1
[11] A/59/280/Add.1
[12] A/C.5/59/12
[13] A/C.5/58/16
[14] A/59/715
[15] See A/59/408

6. *Stresses* that the administrative law framework of the Organization should allow all levels of United Nations staff to obtain due process, regardless of their location, grade or contractual arrangement;

7. *Appreciates* the efforts made by staff volunteering their services in the system of justice of the United Nations, and stresses the need to provide them with further training;

8. *Takes note with interest* of the option described in paragraph 30 of the report of the Secretary-General,[1] and requests the Secretary-General to explore the implications of this option and report thereon in the context of his annual report on the administration of justice in the Secretariat;

9. *Affirms* that the functions of staff members selected to serve under the new system are official in nature, and requests the Secretary-General to ensure that those staff members are given sufficient time off from their substantive responsibilities to perform their functions;

10. *Recognizes* that the administration of justice system, being heavily dependent on volunteers, requires frequent and comprehensive training of participants, and calls upon the Secretary-General to organize periodic training at each of the headquarters duty stations for all staff involved in the system of administration of justice;

11. *Stresses* the importance of the proper implementation of a sound performance appraisal system as a potential means of avoiding conflict;

12. *Also stresses* the need to provide training in managerial skills to improve managers' conflict resolution skills;

13. *Further stresses* the need to link managers' ability to respond in the course of a proceeding with their own individual performance appraisal;

14. *Notes* that staff rule 112.3, relating to the financial liability of managers, has yet to be implemented, further notes the issuance of administrative instruction ST/SGB/2004/14, and requests the Secretary-General to report on its implementation to the General Assembly at its sixty-first session;

15. *Requests* the Secretary-General to expeditiously implement the recommendations of the Office of Internal Oversight Services, subject to the provisions of the present resolution;

16. *Decides* that the time limits recommended by the Office of Internal Oversight Services will be mandatory within the appeals process once adequate capacity is in place, and no later than 1 January 2006;

17. *Also decides* that measures should be taken to eliminate the appearance of conflict of interest, and towards this end requests the Secretary-General to proceed with the transfer of the responsibility for formulating decisions on appeals from the Department of Management to the Office of the Secretary-General;

II
The informal mechanism of administration of justice

Ombudsman

18. *Stresses* the importance of the Office of the Ombudsman as the primary means of informal dispute resolution, and reaffirms General Assembly resolution 56/253 of 24 December 2001 on the establishment of the Office;

19. *Requests* that the Office of the Ombudsman continue and expand its outreach activities, in particular to local, national and General Service staff, in order to facilitate equal access and awareness-raising, bearing in mind the structure, activities and operational environment of the Organization;

20. *Requests* the Secretary-General to submit proposals for strengthening the office of the Ombudsman through improved access to it for staff serving in different locations;

21. *Invites* the Office of the Ombudsman to reduce all possible delays in responding to the requests of staff in order to ensure that staff are encouraged to seek resolution of conflict in an informal way;

22. *Requests* the Secretary-General to submit, in the context of his annual report on the administration of justice in the Secretariat, information on the activities of the Ombudsman, including general statistical information and information on trends and comments on policies, procedures and practices that have come to the attention of the Ombudsman;

III
The formal mechanisms of administration of justice

Panel of Counsel

23. *Takes note* of the role of the Coordinator of the Panel of Counsel, in preliminary consultations before initiation of the formal appeals process, to support an informal resolution at an early stage;

24. *Stresses* the role of staff representatives in advising and assisting staff in addressing issues informally and formally;

25. *Recognizes* the need to strengthen the capacities of the Panels of Counsel by increasing the opportunity for training on the United Nations Staff Rules and Regulations, policies, procedures or precedents for staff serving on the Panels, in view of the urgent need to strengthen legal advice and administrative support for staff members submitting an appeal;

26. *Invites* staff representatives to explore the possibility of establishing a staff-funded scheme in the Organization that provides legal advice and support to the staff; staff representatives may consult with the Secretary-General as they deem appropriate;

27. *Invites* the Secretary-General to consider appropriate incentives to be built into the system to encourage staff members to serve on the Panels;

28. *Encourages* the Panel of Counsel to increase outreach activities, and requests the Secretary-General to consider the inclusion of travel costs in section 28

A, Office of the Under-Secretary-General for Management, of the proposed programme budget for the biennium 2006-2007 for this purpose;

Administrative Law Unit

29. *Notes* that the Administrative Law Unit has the multiple functions of administrative review, appeals, disciplinary matters and advisory services;

30. *Requests* the Secretary-General to present proposals to separate the above-mentioned functions, through the redeployment of resources, in order to avoid conflicts of interest and to report thereon by the end of the fifty-ninth session, taking into account the following needs:

(a) To ensure the necessary means to collect evidence;

(b) To advise both the appellant and the respondent;

(c) To ensure the uniform application of administrative decisions;

(d) To ensure appropriate consultation with the Office of Human Resources Management and legal experts;

(e) To relay all necessary information to the Office of Human Resources Management;

31. *Stresses* that increased accountability by managers would contribute to the elimination of the backlog of appeals cases, as stated in the report of the Secretary-General,[16] and decides that as a means to facilitate early consideration of cases, the following procedures should be adopted:

(a) Staff members wishing to appeal an administrative decision should send a copy of their request to the executive head of their department;

(b) The Administrative Law Unit should clarify with managers the requirements for the respondent's reply and the contributions expected from managers, as well as time limits;

32. *Also requests* the Secretary-General to ensure that written explanations by managers to the Administrative Law Unit are submitted within eight weeks with no possibility of extension, and decides that compliance with this responsibility shall constitute part of the performance appraisal of managers;

33. *Decides* to amend staff rule 111.2 (a) to provide that staff wishing to appeal an administrative decision shall submit to the executive head of their department, office, fund or programme a copy of the letter addressed to the Secretary-General requesting a review of the case;

Joint Appeals Board

34. *Stresses* the particular importance of providing adequate training to the members of the Joint Appeals Board;

[16] A/59/449, para. 27.

United Nations Administrative Tribunal

35. *Recalls* paragraph 5 of its resolution 57/307, and regrets that the steps necessary to separate the secretariat of the United Nations Administrative Tribunal from the Office of Legal Affairs were not undertaken;

36. *Endorses* the proposal of the Secretary-General to transfer the resources of the United Nations Administrative Tribunal from section 8, Legal affairs, of the proposed programme budget to section 1, Overall policy-making, direction and coordination, effective from the beginning of the biennium 2006-2007;

37. *Reaffirms* paragraph 5 of its resolution 57/307, and requests the Secretary-General to guarantee the immediate independence of the United Nations Administrative Tribunal, including through ensuring the provision of administrative and logistical services that are exclusive to the secretariat of the United Nations Administrative Tribunal;

38. *Recalls* the recent amendment to the statute of the United Nations Administrative Tribunal, which provides that members shall possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction;

39. *Acknowledges* the need for the further strengthening of professionalism in the United Nations Administrative Tribunal by increasing membership of professional judges;

40. *Decides* to amend article 3, paragraph 1, of the statute of the Tribunal, with effect from 1 January 2006, to read:

> "The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess judicial experience in the field of administrative law or its equivalent within their national jurisdiction. Only three members shall sit in any particular case";

41. *Also decides* that the amendment to article 3 will be applied to the election of new members of the Tribunal with effect from 1 January 2006;

42. *Requests* the Secretary-General to submit proposals on compensation for the members of the United Nations Administrative Tribunal once all its members meet the criteria set out in article 3 of the statute as amended in the present resolution;

43. *Notes* that the vast majority of appeals against administrative decisions concern termination of employment or non-renewal of employment contracts, and decides, with reference to recommendation 5 of the Office of Internal Oversight Services,[17] to revert to the question of amendment of article 7 of the statute of the United Nations Administrative Tribunal following receipt of the report of the panel as described in section IV of the present resolution;

44. *Also notes* the report of the Joint Inspection Unit on administration of justice;[18]

[17] See A/59/408, para. 65.

[18] See A/59/280 and Corr.1.

45. *Stresses* the importance of the eventual harmonization of the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal;

46. *Requests* the United Nations Administrative Tribunal to review the rules, practices and procedures of similar tribunals with a view towards enhanced effective management of caseloads;

IV
Review of the internal justice system

47. *Decides* that the Secretary-General shall form a panel of external and independent experts to consider redesigning the administration of justice system;

48. *Also decides* that the panel shall be composed of a pre-eminent judge or former judge with administrative law experience, an expert on alternative dispute resolution methods, a leading legal academic in international law, a person with senior management and administrative experience in an international organization and a person with United Nations field experience;

49. *Further decides* that the terms of reference of the redesign panel shall be as follows:

(a) The redesign panel shall propose a model for a new system for resolving staff grievances in the United Nations that is independent, transparent, effective, efficient and adequately resourced and that ensures managerial accountability; the model should involve guiding principles and procedures that clearly articulate the participation of staff and management within reasonable time frames and time limits;

(b) The redesign panel shall:

(i) Consider the relevant resolutions of the General Assembly;

(ii) Receive and review information from all the relevant stakeholders regarding existing mechanisms for the administration of justice in the Organization;

(iii) Consult with United Nations staff, including individual staff members, the Staff Union and managers, in order to form an opinion as to how and why some aspects of the system function effectively while other aspects do not;

(c) The redesign panel shall, in particular:

(i) Consider alternative systems for resolving staff grievances by considering other models of organizational dispute resolution, while acknowledging the uniqueness of the United Nations system, in particular the immunity of United Nations staff from national laws and thus the lack of recourse to national courts;

(ii) In proposing a model, consider the value of creating an effective system for handling staff complaints that involves alternative forms of dispute resolution by which cases can be settled by mutual consent, such as mediation, conciliation, arbitration and/or an ombudsman;

(iii) Consider the peer review

(iv) Identify proactive measures such as education and training, that the United Nations can implement to minimize the number of disputes that arise;

(v) Examine the functioning of the Office of the Ombudsman and, if needed, present models to provide services tailored to responding to the needs of the Organization;

(vi) Examine and develop the criteria to be used in the categorization of cases;

(vii) Review the functioning of the United Nations Administrative Tribunal and examine the further harmonization of its statute and that of the International Labour Organization Administrative Tribunal with a view to further professionalizing the United Nations Administrative Tribunal;

(viii) Examine the possibility of an integrated judicial system with a two-layer structure of first and second instance, taking into account existing structures;

(ix) Examine the legal representation of the Secretary-General in the administration of justice system;

50. *Decides* that the panel shall start its functions no later than 1 February 2006 and shall present its findings and recommendations by the end of July 2006;

51. *Requests* the Secretary-General to transmit the report and recommendations of the panel to the General Assembly as a matter of priority;

52. *Also requests* the Secretary-General to submit his comments on the recommendations contained in the panel's report, along with the estimate of time and resources needed for their implementation, to the General Assembly at the first part of its resumed sixty-first session;

53. *Decides* that activities requested above that would give rise to additional resource requirements during the biennium 2004-2005 should be included in the proposed programme budget for the biennium 2006-2007.